IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6901 of 1993

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SAURASHTRA MAJOOR MAHAJAN SANGH

Versus

STATE BANK OF SAURASHTRA

Appearance:

1. Special Civil Application No. 6901 of 1993

MR CG GOVINDAN for AK CLERK for Petitioner

MR SB VAKIL with AS Vakil for Respondent No. 1

SERVED BY AFFIX.-(R) for Respondent No. 2/1

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 21/10/2004

ORAL JUDGEMENT

The petitioner is a Labour Union. The petitioner challenges the judgment and award dated 25th January, 1993 passed by the Central Government Industrial Tribunal, Bombay in Reference C-GIT-2/31/86. By impugned judgment and award, the claim of the 19 workmen of Maharana Mills Limited [then in process of winding up] [hereinafter referred to as, "the said Mills"] against the respondent-State Bank of Saurashtra [hereinafter referred to as, "the Bank"] is rejected.

These 19 workmen were the employees of the said Mills. As the said Mills had closed down the Bank, being a secured creditor, was interested in the safe keeping of the assets of the said Mills. The workmen claim that the Bank had taken over the possession of the said Mills alongwith the workmen. With a view to protecting the assets of the said Mills, the Bank engaged 19 workmen [erstwhile employees of the said Mills] as Security Guard and paid the wages on behalf of the said Mills. The said workmen thus served as Security Guard from 1st March, 1983 to 31st January, 1984. Thereafter, the said workmen were discontinued and contract for security was given to one Shri Jayantilal K. Erda. The said Shri Erda engaged the said workmen as Security Guard. The workmen raised industrial dispute and claimed that they were the employees of the Bank and that the Bank had illegally terminated their service and changed the condition of service from that of permanent employment to contractual employment under the said Shri Erda.

The said claim of the workmen was contested by the Bank. The Bank denied that the relationship of master and servant did exist between the Bank and the workmen. The service of the workmen stood terminated on closure of the said Mills. The Bank had employed the workmen temporarily by stopgap arrangement and on humanitarian grounds as Security Guard until a permanent arrangement was made by the Bank. As such arrangement was made, the Bank had by its notice dated 31st December, 1983 terminated service of the workmen. The said termination of service did not contravene section 9 (a) or Section 25-F of the Industrial Disputes Act, 1947. None of the workmen was eligible for appointment in the Bank nor had they served the Bank for more than a year. Therefore also, provisions contained in Section 25-F and 25-H of the Act were not attracted.

In view of the above facts, the Tribunal held that the Bank had engaged one Atiya Bhoja as security contractor. The workmen were engaged by the said Atiya

Bhoja. Hence, the workmen were not the servants of the Bank. The security charges were paid by the Bank on behalf of the said Mills.

Learned advocate Mr. Govindan has assailed the impugned judgment and award. He has submitted that the Tribunal below has erred in not holding that the Bank had employed the workmen as Security Guard; the master and servant relationship was created between the Bank and the workmen; the provisions of Sections 25F & 25H of the Act did apply to the workmen and that the Bank was under obligation to continue the workmen in service and to pay the wages.

No appointment order made in favour of the workmen by the Bank has been brought on the record of the matter. Learned advocate Mr. Govindan has admitted that no such order was made in favour of the workmen. In absence of such order and in view of the above facts, in my opinion, the Tribunal below has rightly held that the workmen were not employed by the Bank or that the workmen had no claim of employment against the Bank.

No case for interference is made out. The petition is dismissed. Rule is discharged.

{Miss R.M Doshit, J.}

Prakash*